

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

Com. Sub. for
SENATE BILL NO. 300

(By Mr. *Cassm* [Mr. President] original sponsor)

PASSED March 11, 1967

In Effect for Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-17-67

300

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 300

(MR. CARSON [MR. PRESIDENT] original sponsor)

[Passed March 11, 1967; in effect from passage.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, establishing a state board of investments; specifying its membership, officers, duties, powers and functions; defining certain terms used in article; providing for the promulgation of rules and regulations and the services of consultants and experts; transferring to the board the duties of state agencies respecting investment of public funds; establishing the classes of securities in which funds made

available for investment for periods in excess of one year may be invested; establishing the classes of securities in which funds may be invested for periods of one year or less; imposing restrictions on the purchase, sale or exchange of securities; specifying certain duties of the state treasurer with respect to the collection of interest and principal of securities in his custody; authorizing boards, officials, agencies, etc., charged with the administration of funds to determine the part thereof available for investment and to direct board to realize on investment whenever necessary or expedient to use the funds invested; providing for a continuous post-audit and reports of the investment transactions of the board; declaring the provisions of this article to be controlling in the event of the inconsistency of provisions of any other law; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six, to read as follows:

**ARTICLE 6. WEST VIRGINIA STATE BOARD OF
INVESTMENTS.**

§12-6-1. Purposes and objects; how article cited.

This article, which may be cited as the "Investment of
2 State Funds Law", is enacted to provide a centralization
3 of the investment responsibility for state funds and to
4 enlarge the classes of securities in which public funds
5 may be invested.

§12-6-2. Definitions.

The following terms, whenever used or referred to in
2 this article, shall have the following meanings:

3 (a) The term "board" shall mean the West Virginia
4 state board of investments.

5 (b) The term "fund" or "funds" shall include the
6 workmen's compensation fund; the state teachers' retire-
7 ment system funds; the death, disability and retirement
8 fund for members of the department of public safety; the
9 public employees' retirement system funds; the judges'
10 retirement fund; and any other public funds of this state
11 which may lawfully be invested: *Provided, That* "fund"
12 or "funds" shall not be construed to include (1) the

13 "School Fund", established by section four, article twelve
14 of the state's constitution and legislation adopted there-
15 under, or (2) the sinking funds which are administered
16 and controlled by the state sinking fund commission.

17 (c) The term "securities" shall include all bonds, notes,
18 debentures or other evidences of indebtedness.

§12-6-3. State board of investments established; members.

There is hereby created and established a state board
2 of investments, to be known as the "West Virginia State
3 Board of Investments", and the same is hereby made a
4 body corporate, and by that name the board may adopt
5 and use a seal; contract and be contracted with; acquire
6 and dispose of personal property; sue and be sued; and
7 otherwise exercise all powers and functions necessary
8 and germane to its public corporate existence and pur-
9 poses. The board shall consist of the governor, state
10 treasurer and state auditor.

§12-6-4. Chairman and executive secretary; custodian of funds

and securities; staff agency; bonds of board members.

The governor shall be the chairman, and the state
2 treasurer shall be the executive secretary of the board

3 and the custodian of all funds, securities and assets desig-
 4 nated or described in this article; and the office of the
 5 state treasurer shall act as staff agency for the board.

6 Each member of the state board of investments shall
 7 give a separate and additional bond from a surety com-
 8 pany qualified to do business within the state of West
 9 Virginia in the penalty of two hundred fifty thousand
 10 dollars for the faithful performance of his duties as a
 11 member of said board.

**§12-6-5. Rules and regulations; consultant services and advice;
 costs; brokerage commission.**

The board shall formulate and adopt rules and regu-
 2 lations for the protection of funds invested and obtain
 3 such consultant services and expert advice from a nation-
 4 ally recognized investment advisor or advisors as are
 5 necessary for the prudent and proper management and
 6 investment of said funds.

7 All costs for consulting services, expert advice, the
 8 bonds provided for in the preceding section, and other
 9 lawful costs shall be proper charges against and payable

10 on a pro rata basis from the earnings of the various funds
11 subject to investment under the provisions of this article.

12 Any brokerage commission that may be paid shall
13 follow specifically the generally accepted brokerage com-
14 mission as set forth by the rules of fair practice of the
15 national association of security dealers or a recognized
16 national security exchange.

17 All expert advice and consultant opinions shall be re-
18 duced to writing and be always available for use in the
19 continuous post-audit provided for in section seventeen
20 hereof, and all such expert advice and consultant opin-
21 ions shall be filed in the office of the state treasurer and
22 made available for public inspection upon completion
23 of the transaction.

§12-6-6. Legal opinions.

Prior to making any investment in the classes of securi-
2 ties specified in paragraphs (b) excluding direct general
3 obligation securities of this state, (c), (d) and (e) of
4 section nine of this article, and paragraph (c) of section
5 ten of this article, the board shall require an original or
6 certified copy of the written opinion of a nationally recog-

7 nized bond attorney or attorneys certifying to the legality
8 of such securities.

§12-6-7. Transfer of duties of state agencies to board respecting investment of public funds.

All duties vested by law in any agency or board of the
2 state relating to the investment or reinvestment of mon-
3 eys, and the purchase, sale or exchange of any investment
4 or securities, of and for any funds, are hereby transferred
5 to and shall be exercised and performed for such fund
6 by the board: *Provided*, That neither this nor any other
7 section of this article shall in any manner apply (1) to
8 the "Board of the School Fund" and "School Fund"
9 established by section four, article twelve of the state's
10 constitution and legislation adopted thereunder, or (2)
11 to the state sinking fund commission.

§12-6-8. Legal status of agencies and boards continued.

Except as otherwise provided in this article, every state
2 agency or board shall continue to have all of the powers
3 and shall exercise all of the functions and duties vested
4 in or imposed upon it by law, as to any fund, and shall
5 continue to be constituted as provided by existing law.

§12-6-9. Investments for periods in excess of one year.

Notwithstanding the restrictions which may otherwise
2 be provided by law as to the securities in which funds
3 may be invested, funds made available for investment
4 for periods in excess of one year may be invested by
5 the board, without the approval of any other state agency
6 or official other than as required in section six-a of this
7 article, in the following classes of securities, and not
8 otherwise:

9 (a) Securities of the United States or agency thereof,
10 or those guaranteed by, or for which the credit of the
11 United States or agency thereof is pledged for the pay-
12 ment of the principal and interest thereof.

13 (b) Direct general obligation securities of this state,
14 or any other state or territory of the United States, or
15 the District of Columbia, unconditionally guaranteed as to
16 the principal and interest by such other state or territory
17 of the United States, or the District of Columbia: *Pro-*
18 *vided*, That (1) such other state, territory, or the District
19 of Columbia has the power to levy taxes for the payment
20 of the principal and interest of such securities, and (2)

21 at the time of investment such other state, territory, or
22 the District of Columbia is not in default in the payment
23 of any part of the principal or interest owing by it upon
24 any part of its funded indebtedness.

25 (c) Securities issued by a federal land bank, or by a
26 federal intermediate credit bank, under the act of Con-
27 gress of July seventeen, one thousand nine hundred six-
28 teen, known as the "Federal Farm Loan Act", as amended
29 or supplemented from time to time, or by the federal
30 home loan bank system, federal national mortgage associa-
31 tion, or banks for cooperatives.

32 (d) Securities issued, assumed or unconditionally guar-
33 anteed by the International Bank for Reconstruction and
34 Development, or Tennessee Valley Authority.

35 (e) Any fixed interest bond, note or debenture of any
36 corporation organized and operating within the United
37 States: *Provided*, That such corporation shall have a
38 minimum net worth of fifteen million dollars and its
39 securities or its parent corporation's securities are listed
40 on one or more of the national stock exchanges: *Pro-*
41 *vided however*, That (1) such corporation has earned a

42 profit in eight of the preceding ten fiscal years as reflected
43 in its statements, and (2) such corporation has not de-
44 faulted in the payment of principal or interest on any
45 of its outstanding funded indebtedness during its pre-
46 ceding ten fiscal years, and (3) the bonds, notes or de-
47 bentures of such corporation to be purchased are rated
48 "AA" or the equivalent thereof or better than "AA" or
49 the equivalent thereof by at least two or more nationally
50 recognized rating services, such as Standard and Poor's,
51 Dun & Bradstreet, or Moody's.

§12-6-10. Investments for short-term periods.

Notwithstanding the restrictions which may otherwise
2 be provided by law as to the securities in which funds
3 may be invested, funds made available for investment
4 for periods of one year or less may be invested by the
5 board, without the approval of any other state agency
6 or official other than the written opinion as required in
7 section six-a of this article, in the following classes of
8 securities and not otherwise.

9 (a) Certificates or other obligations of the United
10 States or for which the full faith and credit of the United

11 States is pledged, which mature on such dates as will
12 make available such amount of cash as required.

13 (b) Obligations of the United States which are re-
14 deemable by the United States treasury at the owner's
15 option at fixed redemption values within one year from
16 the date of such investment.

17 (c) Securities issued by any corporation which will
18 meet the requirements of section nine-e hereof and
19 mature within one year.

§12-6-11. Purchase, sale or exchange of securities; restrictions.

The board shall not invest more than five per cent of
2 each fund placed with it for investment in any bonds,
3 notes or debentures of any one corporation meeting the
4 requirements of paragraph (e) of section nine of this
5 article; nor shall the board invest more than thirty-five
6 per cent of each fund placed with it for investment in
7 bonds, notes or debentures of corporations meeting the
8 requirements of paragraph (e) of section nine of this
9 article.

10 Securities purchased or held under the provisions of
11 this article may be sold or exchanged for other securities:

12 *Provided*, That (1) no security shall be purchased, sold
13 or exchanged without the concurrence of a majority of
14 all members of the board, (2) no security shall be pur-
15 chased at a price above, nor sold or exchanged at a price
16 below, its prevailing fair market value, (3) no security
17 shall be purchased, sold, or exchanged for the purpose
18 of aiding any individual, firm or corporation by the pay-
19 ment of brokerage commissions or fees thereto, (4) no
20 security shall be received in exchange which does not
21 comply with the requirements of sections nine or ten
22 of this article, and (5) the board shall not engage in any
23 arbitrage practices.

§12-6-12. Exercise of judgment in making investments.

Any investment made under this article shall be made
2 with the exercise of that degree of judgment and care,
3 under circumstances then prevailing, which men of
4 experience, prudence, discretion and intelligence exer-
5 cise in the management of their own affairs, not for specu-
6 lation but for investment, considering the probable safety
7 of their capital as well as the probable income to be
8 derived.

§12-6-13. Duties of state treasurer.

It shall be the duty of the state treasurer to collect
 2 the interest, or other income on, and the principal of
 3 such securities in his custody as said sums become due
 4 and payable, and to credit same when so collected, to
 5 the fund to which the investments belong. Whenever a
 6 given investment is owned by two or more funds, the
 7 income received shall be prorated in accordance with
 8 the ownership of the respective funds.

§12-6-14. Records of investments.

The board shall keep for each such fund for which
 2 investments are made a separate account, to be desig-
 3 nated by name and number, in which shall be recorded
 4 the individual amounts and the totals of all investments
 5 belonging to such fund. Every receipt and collection or
 6 disbursement when received or made shall be immedi-
 7 ately recorded to the account of the particular fund to
 8 which it belongs.

§12-6-15. Reports of board.

The board shall prepare quarterly a complete and full
 2 report of its operations and its investments and furnish

3 a copy thereof to the governing authority of each fund,
4 the president of the Senate, speaker of the house, legis-
5 lative auditor, and upon request to any legislative com-
6 mittee, any banking institution in this state, and any
7 member of any news media, and such report shall be
8 kept available for inspection by any citizen of this state.

§12-6-16. Making funds available for investment.

The board, commission, department, official or agency
2 charged with the administration of any fund shall, con-
3 sistent with other provisions of law, determine what part
4 thereof is available for investment and shall, consistent
5 with other provisions of law, have the authority to direct
6 the board to collect, sell or otherwise realize upon any
7 investment whenever it becomes necessary or expedient
8 to use any of the funds invested.

§12-6-17. Post-audit.

There shall be a continuous post-audit conducted by
2 the legislative auditor of the investment transactions of
3 the board, and a copy of said post-audit for the preceding
4 calendar year shall be furnished to each member of the
5 Legislature upon its convening in January of each year.

§12-6-18. Severability of provisions.

If any provisions of this article, or the applicability
2 thereof to any person or circumstance, is held invalid,
3 the remainder of this article and the applicability thereof
4 and of such provisions to other persons or circumstances
5 shall not be affected thereby.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompos
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Myers
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Howard E. Carson
President of the Senate

H. Leban White
Speaker House of Delegates

The within approved this the 17
day of March, 1967.

Hubert C. Smith
Governor

PRESENTED) THE
GOVERNMENT

Date 3/12/62

Time 11:08 a.m.